

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

FRANK PAPINEAU

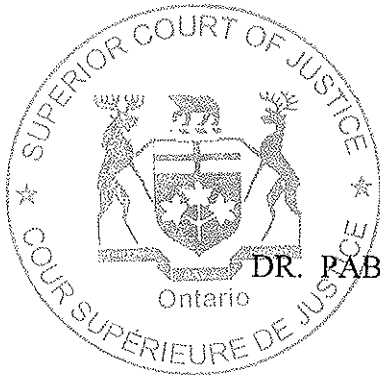
Plaintiff

- and -

DR. PABLO ROMERO-SIERRA and DR. JOHNNY BRISEBOIS

and KEMPTVILLE DISTRICT HOSPITAL

Defendants



STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiffs' lawyer or, where the Plaintiffs does not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

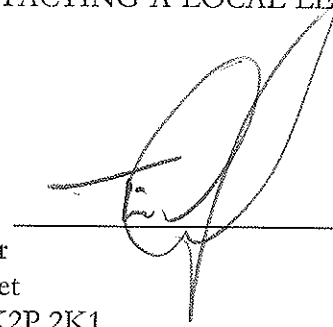
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: August 8 2013

Issued by:
Local Registrar
161 Elgin Street
Ottawa, ON K2P 2K1



To:

DR. PABLO ROMERO-SIERRA

Main Street Family Health Centre
1251 Main Street
Stittsville Ontario
K2S 2E5

And To:

DR. JOHNNY BRISEBOIS

KEMPTVILLE DISTRICT HOSPITAL
3675 Concession Road
Kemptonville Ontario
K0G 1J0

And To:

KEMPTVILLE DISTRICT HOSPITAL

3675 Concession Road
Kemptonville Ontario
K0G 1J0

CLAIM

1. The Plaintiff Frank Papineau claims:
 - a. General Damages in the amount of \$350,000.00;
 - b. Special Damages, including past and future loss of income, loss of competitive advantage, future costs of care, housekeeping and home maintenance, the full particulars of which are not available at the time of preparation of this Statement of Claim but will be provided to the Defendants prior to trial;
 - c. Damages for the Ontario Ministry of Health and Long Term Care's (O.H.I.P.) subrogated interest in an amount to be ascertained;
 - d. Pre-judgment and post-judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43 as amended;
 - e. The cost of this action on a Substantial Indemnity Basis, with HST thereon; and
 - f. Such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff Frank Papineau is a 49-year-old man, born on August 17, 1963, who resides in the City of Ottawa, in the Province of Ontario. Frank was at all material times a patient under the family care practise of Dr. Romero-Sierra MD., and a patient at the Kemptville Hospital Emergency Department under the care of Dr. Brisebois, MD.

3. The Defendant, Dr. Romero Sierra was at all material times a family physician practicing in or about the Town of Stittsville, duly licensed by the College of Physicians and Surgeons for Ontario.
4. The Defendant, Dr. Brisebois, was at all material times a physician practicing in or about the Town of Kemptville, Ontario, duly licensed by the College of Physicians and Surgeons for Ontario, and enjoyed privileges at the Kemptville District Hospital.
5. The Defendant, Kemptville District Hospital, was at all material times a hospital providing emergency medical services to patients covered by the Ontario Health Insurance Program, a fully accredited healthcare facility operating under Ontario provincial statute and regulations.

BACKGROUND

6. Frank Papineau was born on August 17, 1963, and is a 49 year old man. His prior medical history was unremarkable, and clinically insignificant. Prior to April 14, 2010, Frank enjoyed an excellent quality of life. He was active and ambulatory, a successful business man and father of a healthy daughter.
7. On April 14, 2010 Frank was bitten by a tick. He attended at the Kemptville District Hospital Emergency Department to be assessed and diagnosed with respect to the insect bite. He was assessed and diagnosed by Dr. Johnny Brisebois, MD, while in the

Emergency Department. Frank Papineau was given Amoxil 250 mg by mouth, as ordered by Dr. Brisebois and was discharged from the hospital the same day, with a prescription for Amoxicillan 500 mg (three times daily) for 10 days.

8. Following the visit at the Emergency Department, Frank Papineau suffered an onslaught of physiological symptoms including heart problems, psychological problems, urological problems, fatigue, and a host of clinically relevant symptoms. Frank Papineau attended several times, over the course of two years, to the Stittsville Family Medical Centre under the medical attention of Dr. Romeo- Sierra. He repeatedly asked Dr. Romero-Sierra if there was a possibility that he had Lyme disease. Frank Papineau was never investigated for Lyme disease.
9. Frank Papineau was diagnosed with a complicated case of Lyme disease.

ALLEGATIONS OF NEGLIGENCE, MALPRACTICE AND BREACH OF CONTRACT

10. The Plaintiff pleads and the fact is that as a result of the misdiagnosis of the insect bite, the incorrect prescription provided to him April 14, 2010, the lack of proper medical assessments and diagnosis, the lack of a standard of care provided by both medical physicians, and the lack of communication and dissemination of medical documentation from the Kemptville Hospital to the office where Frank Papineau received his primary

care on an ongoing basis, the Defendants have caused serious, severe and permanent injuries, which have resulted in severe and chronic disease to Frank Papineau.

As to Dr. Romero Sierra:

11. The Plaintiff pleads and the fact is that the injuries and damage aforesaid were caused by the negligence, malpractice and breach of contract of Dr. Romero Sierra, the particulars of which are as follows:
 - a. He was an incompetent physician lacking in skill, education, training and judgment;
 - b. He failed to properly investigate, diagnose and treat Frank's conditions;
 - c. He misdiagnosed Frank Papineau, and didn't investigate the claim or correspond with the Kemptville District Hospital with regards to the patient's attendance at the Emergency Department;
 - d. He ignored the signs and symptoms, and considered Frank a problem client, and diagnosed him with a psychological condition, despite the patient's story of being bitten by a tick;
 - e. He ignored the significant, realistic and probable consequence of not prescribing the proper medication to Frank Papineau, in case the diagnosis was actually that of a tick bite;
 - f. He had the opportunity to avoid and reduce the significant and traumatic consequences which Frank Papineau now suffers, by choosing to diagnose and treat a differential diagnosis of a tick bite. He chose not to, despite the clinical signs and symptoms;

- g. He failed to take the reasonable steps to ensure that Frank Papineau received medical care consistent with accepted medical standards which a reasonable physician would have practiced in the circumstances.

As to Dr. Brisebois

12. The Plaintiff pleads and the fact is that the injuries and damage aforesaid were caused by the negligence, malpractice and breach of contract of Dr. Brisebois the particulars of which are as follows:
- a. He was an incompetent physician lacking in skill, education, training and judgment concerning tick bites;
 - b. He failed to properly investigate, diagnose and treat Frank's conditions;
 - c. He misdiagnosed the bug bite as something other than a tick bite despite the red ring of inflammation around the bite that is often associated with a tick bite;
 - d. He ignored the nurses notes and misdiagnosed Frank Papineau with a bug bite when in fact, it was reported to the triage nurse that he was in an area endemic of ticks;
 - e. He ignored the significant, realistic and probable consequence of a tick burrow and bite leading to Lyme disease;
 - f. He did not prescribe the proper medication to the patient Frank Papineau;
 - g. He failed to take the reasonable steps to ensure that Frank received medical care consistent with accepted medical standards which a reasonable physician would have practiced in the circumstances.

As to the Kemptville District Hospital

13. The Plaintiff pleads and the fact is that the injuries and damage aforesaid were caused by the negligence, malpractice and breach of contract of the Kemptville District Hospital the particulars of which are as follows:

- a. They did not disseminate the medical assessment, diagnosis and treatment of Frank Papineau to his family, physician Dr. Romero- Sierra;
- b. They did not have enough physicians to adequately assess, diagnose and treat patients in April 2010;
- c. They provided medical services in an endemic geographical area known to be infected with ticks that cause Lyme disease, and they failed to properly staff the hospital with competent practitioners, or contract competent practitioners who would provide a proper diagnosis in the circumstances given the location and epidemiological information;
- d. They failed to take the reasonable steps to ensure that Frank received medical care consistent with accepted medical standards which a reasonable physician would have practiced in the circumstances.

14. As a result of the aforementioned negligence, malpractice and breach of contract, Frank suffered and continues to suffer a severe disease which was contracted by a tick, and was improperly diagnosed for several years. He has undergone therapeutic treatments by other practitioners, but will likely always suffer the consequences of this misdiagnosis as he has lasting

impairments to his cardio circulatory and urological systems. He will continue to require medications and treatments including the administration of medications.

15. As a result of the negligent actions of the Defendants, Frank has suffered a chronic disease, the consequence thereof being pain, and neurological, urological, and circulatory system dysfunction.

16. The Plaintiff pleads that consequences of the Defendants' actions have had a detrimental effect on his life as the impairment has significantly interfered with his ability to enjoy his pre-accident lifestyle.

17. Frank Papineau and the chronic disease he suffers will worsen with the passage of time. He will incur expenses in the future, including expenses for therapy, rehabilitation, attendant care, the use of specialized equipment, specialized housing and other forms of care, the full details of which are not within the Plaintiff's knowledge at this time. His functional independence will be dramatically limited, and he will therefore require access to assistance for activities of daily living and mobility.

18. The Plaintiff states that as a result of this claim, there is a subrogated interest in favor of the Ministry of Health for Ontario in an amount to be ascertained for Frank Papineau's various clinic and hospital attendances, for assessment, diagnosis and treatment.

19. In the alternative, the Plaintiff states that the cause of his injuries and surrounding circumstances are within the exclusive knowledge and control of the Defendants and the injuries would not have occurred but for the *prima facie* malpractice, negligence and breach of contract of the Defendants. The Plaintiff pleads and relies on the doctrine of *res ipsa loquitur*.

20. The Plaintiff proposes that this action be tried in the City of Ottawa, Ontario.

Date: August 2013

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Solicitor for the Plaintiffs

PAPINEAU
Plaintiffs

-and-

DR. ROMERO-SIERRA et al.

P

Defendants

Court File No.: 13-58490

ONTARIO SUPERIOR COURT OF JUSTICE
Proceeding commenced at Ottawa

STATEMENT OF CLAIM

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